Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for	)	WC Docket No. 07-135
Local Exchange Carriers	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF NEW AMERICA FOUNDATION'S OPEN TECHNOLOGY INITIATIVE, MEDIA ACCESS PROJECT, ACCESS HUMBOLDT, RURAL MOBILE & BROADBAND ALLIANCE, AND CENTER FOR MEDIA JUSTICE

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The Open Technology Initiative at the New America Foundation ("OTI"), Media Access Project ("MAP"), Access Humboldt, Rural Mobile & Broadband Alliance ("RuMBA"), and Center for Media Justice ("CMJ") (together, "Commenters") respectfully submit these comments in response to the Federal Communications Commission's ("Commission") Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding ("Further Inquiry") in the above-captioned dockets. The Further Inquiry seeks additional comment on proposals submitted on behalf of various industry groups and on additional issues not fully developed in the record.

SUMMARY

Commenters urge the Commission to oppose the ABC joint framework proposed by various industry groups, include broad interconnection obligations on Connect America Fund recipients, and include in the fund an adequate amount of support for a broadband pilot program supporting local self-provisioning of broadband infrastructure in the highest cost areas of the country. Specifically, the Commission should: (1) reject the specific provisions within the ABC plan that would raise the Subscriber Line Charge, grant a Right of First Refusal to incumbent telephone providers, and remove all public interest obligations on fund recipients; (2) as a component of support for broadband services, include explicit interconnection obligations in line with those imposed upon BTOP and BIP awardees; and (3) establish a pilot program to fund the buildout of networks by local communities, networks that can include county and state broadband initiatives, electric and telephone cooperatives, municipal power authorities, and investor-owned service providers, and residents in areas that remain unserved by the Connect America Fund ("CAF").

As proposed, the ABC Plan would inflict far-reaching harms on consumers. The Plan particularly harms the most vulnerable among consumers – the elderly and low-income rural, who depend on their telephone service as a primary means for communication. The Plan effectively locks out non-incumbent commercial providers as well as community and municipal networks from any opportunity for fund support that may enable them to deploy high-speed broadband service in a more efficient manner and at higher quality than incumbent providers. Finally, in an unprecedented move, the Plan eliminates any regulations on high-cost and CAF recipients, essentially doling out bonuses to large incumbents at taxpayer cost.

In addition, interconnection requirements for CAF recipients are critical for promoting competition and broadband adoption in high-cost communities. Evidence domestically and abroad indicates that interconnection obligations have a significant positive impact on connectivity in communities, and the Commission should ensure inclusion of those obligations here. Indeed, the Administration's successful BTOP program is largely centered on the concept of open access and reasonably priced interconnection to, and transport via, robust high-capacity middle mile facilities.

Finally, the CAF and the Commission should not leave potentially millions of households without access to broadband. Commenters support ubiquitous connectivity, even for the highest-cost communities, and believe community networks and models could serve presently unserved areas that traditional commercial carriers are unwilling to serve and could do so at significantly lower costs. Commenters support the proposal to establish an adequately-funded pilot program to sustain local self-provisioning and buildout of broadband in the highest cost areas

I. INTRODUCTION

The ABC Plan as proposed poses serious harms to consumers and bestows benefits upon incumbent carriers by creating unjustified rate increases and granting a ROFR even where carriers have failed to serve existing areas and locking out potential competitors, all without any public interest obligations as conditions for fund support. Moreover, the Plan, by design, will leave many of the highest cost areas unserved.

Commenters therefore oppose the ABC Plan and urge the Commission to reject it as an unearned reward for incumbent carriers without adequate public interest safeguards to protect consumers. In particular, Commenters request explicit interconnection obligations for providers receiving fund support in order to promote competition and adoption. Finally, Commenters support the goal of ubiquitous broadband access and, in furtherance of that goal, the creation of an adequately-funded pilot program to facilitate community self-provisioning to areas presently unserved by traditional carrier models.

II. COMMENTERS OPPOSE THE ABC PLAN.

In February's NPRM, the Commission proposed to modernize its Universal Service Fund ("USF Fund" or "Fund") and intercarrier compensation ("ICC") system by "eliminating waste and inefficiency and reorienting USF and ICC to meet the nation's broadband availability challenge, transforming a 20th century program into an integrated program tailored for 21st century needs and opportunities."[1] However, the "ABC" joint framework does not meet those goals. Instead, it further enriches the largest incumbent telecommunications carriers at the

[1] In the Matter of Connect America Fund, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45, *Notice of Proposed Rulemaking*, FCC 11-13 (rel. Feb 8, 2011) ("NPRM").

expense of the public interest and consumers. First, the Plan proposes with no adequate support that carriers be free to increase the Subscriber Line Charge ("SLC") by $3.75. Second, by empowering incumbent providers with a right of first refusal ("ROFR"), the Plan wastefully rewards those who have largely ignored huge swaths of their service area despite receiving decades of public subsidies, and prevents the funding of more cost-effective approaches to providing broadband service in high-cost areas. Finally, the Plan would further erode industry accountability with its complete removal of any public interest obligations on USF and CAF recipients, which is unprecedented and against the public interest.

A. Raising the SLC is unfair and unjustified.

Commenters strongly oppose the Joint Framework's recommendation that carriers be allowed to gradually increase the SLC by $3.75.[2] Such an increase is both unfair to basic telephone consumers and insufficiently justified in the proceeding. Raising the SLC will raise the cost of basic telephone rates for all consumers, while creating a massive windfall to the very Incumbent Local Exchange Carriers ("ILECs") that despite decades of USF support, neglected and under-invested in rural high-cost areas.[3] Further, there is little evidence that competition will be sufficient to discourage carriers from charging near the maximum SLC.

As comments from NASUCA and the AARP note, these rate increases particularly will harm elderly and rural consumers who continue to rely on basic telephone service. As NASUCA points out:

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[2] *See Ex Parte* Comments of AARP, WC Docket No. 10-90 *et al*, at 1 (filed Aug. 24, 2011) ("AARP Comments") *citing* ABC Framework at 10-12, Joint Letter at 3, n.1.

[3] *See* Comments of Free Press, WC Docket No. 10-90 *et al*, at 13 (filed Aug. 24, 2011) ("Free Press Comments"). The SLC increase "amounts to an estimated $3.6 billion dollar annual revenue increase – nearly a billion dollars more than the amount needed to completely offset a shift to reciprocal compensation levels. *See also* Comments of United States Cellular Corporation, WC Docket No. 10-90 *et al*, at *iv* (filed Aug. 24, 2011) ("U.S. Cellular Comments").

> "…at this time few elderly consumers view wireless service as an economic substitute for wireline service (they may own wireless service, but they use wireless service *in addition to* rather than *instead of* wireline service). In addition to the disproportionately adverse impact on the elderly, consumers in rural areas with less reliable wireless coverage are more vulnerable to SLC increases than are their urban counterparts. In rural areas where wireless service is spotty, a landline connection is essential for households to reach emergency services."[4]

Elderly residents on fixed incomes and (often low-income) rural residents can least afford a hefty increase in monthly telephone bills. As NASUCA rightly notes, the "oft-espoused ILEC view that customers who are dissatisfied with the price or quality of an ILEC's basic local exchange service can 'vote with their feet' rings hollow"[5] given the duopoly or, in many high-cost areas, monopoly market consumers face. Further, as the FCC's own data demonstrates, price-cap regulated carriers currently charge at or near the maximum, and carriers not subject to SLC caps charge fees at or above the federal maximum.[6] To the extent competition exerts any pricing controls, the last thing consumers need is for the Commission to adopt a plan that essentially prescribes a permissible increase, and thereby further encourages carriers to charge the highest SLC.

Moreover, as Free Press notes, "[w]hile it is assumed that the current above-cost access rates are an implicit but necessary subsidy to achieve universal service, no one in this proceeding has offered evidence that the reduction of rates requires a dollar-for-dollar offset in order to ensure that rural rates and services are reasonably comparable to urban rates and services."[7] Further, it makes little sense to allow ILECs, who stand to gain a significant financial windfall from lower inter- and intrastate access charges as the result of ICC reform, to raise SLCs and

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4 Comments of National Association of State Utility Consumer Advocates, WC Docket No. 10-90 *et al*, at 68 (filed Aug. 24, 2011) ("NASUCA Comments").

5 NASUCA Comments, 69.

6 Free Press Comments, 13; *see also* NASUCA Comments, 63, 66-70.

7 Free Press Comments, 9.

rates for all their customers across the board. As NASUCA notes, "only if the increases are limited to areas and carriers where there have actually been lost ICC revenues. … would there be an assurance that the carriers were actually recovering those lost revenues."[8] Commenters agree with Free Press that before the Commission even entertains calls to increase the SLC, it must first clearly determine the SLC amount needed to adequately subsidize rural service. In so doing, it must account for any reforms to ICC as well as any significant, infrastructure-cost reductions caused by technological advances and market changes, and consider whether these factors already have elevated SLC fees in excess of the actual costs for a majority of telephone lines.[9]

B. The proposed Right of First Refusal rewards incumbents for failing to build-out and prevents the funding of more cost-effective approaches.

Commenters also strongly oppose the ABC Plan proposal to give incumbent telephone providers a right of first refusal ("ROFR") of broadband subsidies if they already have 35 percent broadband coverage in a defined area. This arbitrary threshold is clearly designed to advantage ILEC providers[10] and further reward their cherry picking more profitable areas for broadband deployment and deferring buildout into higher cost areas despite receiving decades of public subsidies for their networks. Indeed, by approving the ROFR proposal the Commission would be sanctioning incumbents to continue to be selective regarding the areas they will serve

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8 NASUCA Comments, 65.

9 Free Press Comments, 9-10; *see also* NASUCA Comments, 71. "For nearly two decades, ILECs argued that local voice service was the "cost causer of local telecommunications networks, primarily on the grounds that the network was constructed to provide that service, and every other service that was provided in whole or in part using the local PSTN was an incremental service that should only pay incremental costs. For networks being constructed primarily to provide broadband service, the tables have turned. Voice will also be provided over these networks, but the voice service is no longer the primary cost driver. An exchange telephone service should not pick up the lion's share of the tab for cost recovery on such networks."

10 *See* NASUCA Comments, 84; *see also* Comments of T-Mobile USA, Inc., WC Docket No. 10-90 *et al*, at 24 (filed Aug. 24, 2011) ("T-Mobile Comments").

with available CAF funding, and as United States Cellular warns, "leave islands of unserved areas for other technologies to reach."[11] Traditional ETCs have delineated service areas that typically follow the outside plant topologies of their networks. These networks are designed to aggregate access traffic from subscribers to certain designated levels of density.

Conveniently to its proponents if no one else, the ABC plan forecloses any opportunity for other broadband providers, even entities designated as ETCs, to compete with current price cap carriers to serve unserved or underserved areas should an incumbent decide it wants to accept CAF subsidies in light of its ROFR. As for non-ETCs that already are serving customers in high-cost areas, the proposals fail even to contemplate their inclusion in CAF. This is despite, for example, a recent analysis of fixed broadband access in Illinois revealing that small, local wireless Internet service providers ("WISPs") offered the only available broadband service to around 137,330 households or approximately one-third of the entire state.[12] The ABC plan discourages this activity by predicating the ability of these and other providers to compete for CAF funds on an incumbent provider's decision to take advantage of its ROFR, whether or not those same incumbents have previously neglected deploying broadband to 65 percent of an area. Unsurprisingly among the large number of comments strongly opposing a ROFR are many existing broadband providers that want an opportunity to serve these high-cost areas.[13]

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[11] U.S. Cellular Comments, 16.

[12] *See* WISPs Deliver Where USF Fails, Wireless Cowboys, *available at* http://wirelesscowboys.com/?p=209; PCI Releases 'Broadband Access in Illinois' Baseline Study of Supply, Broadband Illinois, *available at* http://broadbandillinois.org/news/47.

[13] *See e.g.*, Comments of the Rural Cellular Association, WC Docket No. 10-90 *et al*, at 4 (Filed Aug. 24, 2011); Comments of XO Communications, LLC, WC Docket No. 10-90 *et al*, at 16 (filed Aug. 24, 2011); Comments of Nation Cable & Telecommunications Association, WC Docket NO. 10-90 *et al*, at 15-16 (filed Aug. 24, 2011)

Further, as Commenters argued in comments and replies, the CAF should allow non-ETCs, including networks built and operated by local communities and local investor-owned service providers, to compete for broadband subsidies in high-cost areas.[14] Thus, rather than restricting support to such a narrow set of providers, the CAF should leverage these cost-effective providers and models for deploying high-speed broadband service.[15] In its NPRM, the Commission asked for input as to how the ETC certification process could be made more flexible. Several commenters in the proceeding have suggested that the Commission has the authority to assert jurisdiction over the ETC process, and that so doing would allow for qualified applicants to more easily deploy broadband services in the lowest density areas.[16] However, the ABC Plan ignores broadband models that could be more cost-effective and offer a higher quality of service than DSL.[17] Many community and municipal networks already provide cost-effective, high-speed broadband service in high-cost areas through a variety of technologies, including HCF/cable, fiber, and fixed wireless, and should have the same ability to serve their communities and compete for CAF subsidies as incumbent USF recipients.[18]

C. The proposal to eliminate any regulations on USF or CAF recipients is unprecedented and not in the public interest.

[14] Other commenters have also argued for allowing non-ETCs to participate in the CAF. *See e.g.* Comments of Time Warner Cable, WC Docket No. 10-90 *et al*, at 23 (filed Aug. 24, 2011).

[15] Comments of Cox Communications, Inc., WC Docket No. 10-90 *et al*, at 18 (filed Aug. 24, 2011); Google Comments, WC Docket No. 10-90 *et al*, at 23 (filed Aug. 24, 2011).

[16] These include even industry commenters (though in varying contexts), such as AT&T and the American Cable Association. *See* Comments of AT&T, WC Docket No. 10-90 *et al*, at 48 (filed May 23, 2011); Comments of American Cable Association, WC Docket No. 10-90 *et al* at 17-19 (filed Aug. 24, 2011).

[17] Free Press Comments, 8.

[18] For a map of communities currently being served by community-owned networks *see* http://muninetworks.org/communitymap.

Commenters also oppose the Framework's proposal that the Commission remove all Carrier of Last Resort Obligations for all price cap carriers, all obligations on ETCs enumerated in Section 214 of the Communications Act, and all remaining federal rate and other service regulations imposed on price cap ILECs.[19] As NASUCA notes, "[t]he ABC Plan is a one-way street: the large ILECs receive billions of dollars in public funds with no provisions to hold them accountable."[20] Commenters agree with NASUCA that "any action taken by the FCC to 'reform' universal service must not damage the viability of basic telephone service" and such sweeping regulatory changes are "far too fundamental to be decided in this Rulemaking."[21]

Similarly, the framework excludes any public interest obligations with respect to the CAF. The removal of all conditions for support is against both the public interest and the view of Congress in the Recovery Act that federal funding for broadband should support open interconnection and non-discriminatory broadband networks.[22] As NASUCA contends, "CAF support must be accompanied by CAF public interest obligations. These especially include net neutrality and non-discrimination requirements, regardless of whether the Commission's more general Open Internet Order is sustained on appeal."[23] Commenters agree and have previously argued that the Recovery Act's public interest obligations, including open interconnection and

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[19] *See* Free Press Comments, 16.

[20] NASUCA Comments, 28. *See also* Comments of Sprint Nextel Corporation, WC Docket No. 10-90, at 21 (filed Aug. 24, 2011). "Sprint, as a non-ILEC member of the industry, believes that the following elements seriously compromise the fundamental principle of competitive neutrality: ... The 'land grab' transfer of the overwhelming majority of USF dollars to ILECs without any associated pro-competitive public interest access obligations."

[21] NASUCA Comments, 27.

[22] *See* Free Press Comments, 17; American Recovery and Reinvestment Act of 2009 § 6001(j), Pub. L. No. 111-5, 123 Stat. 115 (2009).

[23] NASUCA Comments, 50.

non-discrimination should also be applied to CAF recipients.[24] A number of industry participants in the BTOP and its rural counterpart, BIP, programs already have agreed to these public interest obligations as a condition of public support for their broadband network infrastructure,[25] including many small rural telephone companies.[26] Accordingly, the Commission must apply similar conditions to CAF or otherwise create significant disparities and uneven obligations across high-cost rural areas and competitors.

III. REQUIRING INTERCONNECTION OBLIGATIONS AS A CONDITION OF FUND SUPPORT IS CRITICAL TO PRESERVING THE POTENTIAL FOR COMPETITION IN RURAL AREAS AND COULD INCREASE LEVELS OF BROADBAND ADOPTION.

Open interconnection requirements are particularly important public interest obligations to preserve competition and encourage adoption in rural areas. Accordingly the Commission seeks comment on such obligations for fund recipients, asking "what obligations are appropriate to impose on recipients of funding, as a condition of receiving support, to facilitate provisioning by others in areas the recipients are not obligated to serve,"[27] pointing specifically to a proposal

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[24] Comments of New America Foundation, Consumers Union, and Media Access Project, WC Docket No. 10-90, *et al*, at 14 (filed Apr. 18, 2011) ("NAF *et al* High-Cost Initial Comments"); Reply Comments of New America Foundation, Consumers Union, and Media access Project, WC Docket No. 10-90, *et al*, at 7 (filed May 23, 2011).

[25] *See e.g.* Notice of Limited Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) for the Broadband Initiatives Program, 75 Fed. Reg. 31402, 31403, granting a waiver of Buy American requirements for BIP recipients as being in the public interest; Notice of Funds Availability, 75 Fed. Reg. 3820, 3827 (Jan. 22, 2010), noting public interest obligations for nondiscrimination and interconnection as a condition of BIP funding.

[26] *See* ADVANCING BROADBAND: A FOUNDATION FOR STRONG RURAL COMMUNITIES, UNITED STATES DEPARTMENT OF AGRICULTURE (Jan. 2011) *available at* http://www.rurdev.usda.gov/supportdocuments/RBBreport_V5ForWeb.pdf, which includes listings and references to telephone companies receiving fund support for BIP projects.

[27] Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding, Public Notice, WC Docket No. *et al*, DA 11-1348, at 8 (rel. Aug. 3, 2011) ("Public Notice").

from Public Knowledge, which would "require recipients to make interconnection points and backhaul capacity available so that unserved high-cost communities could deploy their own broadband networks."[28]

Commenters strongly support including interconnection obligations among those requirements imposed on high-cost fund recipients as a condition of fund support, and encourage the Commission to apply such obligations broadly. Like others, Commenters note that the model of broad interconnection obligations, similar to those conditioned on BTOP and BIP awardees, would be appropriate in the High-Cost/CAF USF context as well.[29] Both domestically and abroad, strong interconnection obligations have driven competition and broadband adoption; and including such obligations as conditions of high-cost fund support would ensure that the fund, by virtue of its design, does not foreclose present or future competition in high-cost areas.

As Commenters noted previously in this docket, open access obligations in line with conditions for BTOP and BIP grant recipients "would maintain the potential for competition and offer high-cost area residents more choices in terms of services and plans, while ensuring that USF support can benefit a wide variety of providers."[30] Through access obligations, the

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[28] Public Notice, 8.

[29] Comments of SHLB Coalition, WC Docket No. *et al*, at 19 (filed Aug. 24, 2011) ("SHLB Comments"). "The SHLB Coalition strongly endorses the concept of open networks. While the SHLB Coalition supports Public Knowledge's call for interconnection obligations, we also ask the Commission to go further and adopt interconnection requirements for high-cost fund recipients that mirror those required of BTOP awardees." *See also* Comments of EarthLink, Inc., WC Docket Nos. 10-90 *et al*, at 32-33 (filed Aug. 24, 2011). "Noticeably lacking from the ABC Plan is any requirement to provide unbundled access and interconnection to the CAF-funded networks", and "[t]he Commission should ensure that universal broadband does not mean a single broadband option for Americans living in rural and high cost areas." Letter from Sen. John Kerry (D-Mass.) and Sen. Mark Warner (D-Va.) to Julius Genechowski, Chairman, FCC, *et al*. (filed July 5, 2011) "Funding … should be conditioned on reasonable access and interconnection requirements."

[30] *See* NAF *et al* High-Cost Initial Comments.

Commission would leave open the possibility of future competition rather than essentially backing a natural monopoly in a given area of support.

Lack of access to the high-speed middle-mile links or related infrastructure that carries Internet traffic to the backbone, and the escalating costs associated with transporting traffic among networks, can create substantial barriers to the development of competitive broadband networks, including locally-based community and municipal networks. Community networks are particularly well-suited to provision to high-cost areas.[31] Thus to promote competition and to further maximize the use and benefit of available broadband infrastructure in high-cost areas, the Commission should require CAF recipients to provide interconnection on a non-discriminatory basis and at reasonable rates to other providers.[32]

As the SHLB Coalition highlights in its comments, the NTIA has determined that the BTOP recipients' interconnection obligations already have led to at least 90 different commercial interconnection agreements.[33] This number seems to be only the beginning, as most projects are still in early stages and negotiations continue for 200 more such agreements.[34] Similarly including interconnection requirements on CAF recipients could significantly increase interconnection agreements, promoting robust competition and increased options for under- and unserved communities.

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[31] *See* NAF *et al* High-Cost Initial Comments, 5-6.

[32] *See* NAF *et al* High-Cost Initial Comments, 17.

[33] SHLB Comments, 19 *quoting* Testimony of The Honorable Lawrence E. Strickling, Assistant Secretary for Communications and Information National Telecommunications and Information Administration United States Department of Commerce, Before the Committee on Energy and Commerce, Subcommittee on Communications and Technology, United States House of Representatives, at 5 (Apr. 2011) *available at* http://energycommerce.house.gov/hearings/hearingdetail.aspx?NewsID=8384 ("Strickling Testimony").

[34] Strickling Testimony, 5.

Moreover, data from other countries indicates interconnection requirements help increase broadband adoption. Several overseas studies have found interconnection and other competition policies have a significant, positive effect on broadband penetration.[35] Consistent with these findings, several of the nations that currently outpace the United States in terms of broadband penetration (measured both as broadband subscriptions per 100 inhabitants or households) require some form of interconnection obligation on broadband providers.[36] For example, Denmark, which ranks well ahead of the United States in terms of broadband penetration, requires providers to negotiate agreements "to exchange of traffic, with a view to ensuring mutual access to their telecommunications networks or telecommunications services."[37] It further requires providers "who control a special competitive bottleneck resource" to "meet interconnection requests on non-discriminatory terms at cost-related prices."[38] While multiple factors may contribute to the disparities between broadband penetration rates in these two

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[35] *See* Next Generation Connectivity: Memorandum Describing Intended Updates to the Final Report, Berkman Center for Internet & Society, at 14-15 *available at* http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Next_Generation_Connectivity_Update-Memo_Lit-Review_Dec21.pdf.

[36] Examples of such countries include Switzerland, Netherlands, and Denmark OECD Broadband Portal, *available at* http://www.oecd.org/document/54/0,3746,en_2649_34225_38690102_1_1_1_1,00.html#Penetration *See also* OECD Broadband Statistics table 2a. Households with broadband access, 2009 or latest available year *available at* http://www.oecd.org/dataoecd/20/59/39574039.xls. For case studies of each nation's broadband policies see Yochai Benkler, Next Generation Connectivity: A review of broadband Internet transitions and policy from around the world, Berkman Center for Internet & Society, Harvard University (Oct. 2009) ("Berkman Report"). In addition to penetration and adoption, competition was noted as a frequent benefit. "In other countries that implemented open access successfully, like Sweden, Norway, Denmark, or the Netherlands, the policy enabled entrants like Sofbank and Illiad to compete, and that competition quite clearly followed close on the heels of adoption of the policy and contributed to the creation of a more competitive market" (Berkman Report, 78).

[37] *See* Berkman Report, 178.

[38] *Id*.

countries, a lack of interconnection and open access obligations need not – and should not – be two of them.[39]

IV. THE COMMISSION SHOULD ESTABLISH AN ADEQUATELY FUNDED PILOT PROGRAM TO SUPPORT SELF-PROVISIONING AND BUILDOUT OF BROADBAND IN THE HIGHEST COST AREAS.

In an effort to promote broadband deployment in areas of the country where it costs most to so deploy, Public Knowledge and the Benton Foundation suggest the creation of a pilot program, modeled after The National Telecommunications & Information Administration's ("NTIA") Technology Opportunities Program ("TOP") to make a modest amount[40] of one-time funds available for equipment purchases and infrastructure upgrades for community broadband projects.[41] Commenters support the idea of creating a program for deployment to the highest cost areas that will likely be otherwise left out of the CAF.

Commenters expect that a number of communities, due to a lack of cost incentives for carrier buildout, inevitably will be left out of the Connect America Fund whatever its form. Indeed, the ABC Plan's willingness to exclude 5 million households from access to broadband[42] illustrates the significant challenges of enticing commercial carriers even with generous

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[39] *Id.* at 12.

[40] *See* Comments of Public Knowledge and Benton Foundation WC Docket No. 10-90 *et al*, at 7 (filed Apr. 18, 2011). "It [the program] could be funded at levels similar to the now-defunct Technology Opportunities Program, which was $45.1 million in FY 2001."

[41] Comments of Public Knowledge and Benton Foundation, WC Docket No. 10-90 *et al*, at 9 (filed Aug. 24, 2011) ("PK/Benton Comments"). *See also Ex Parte* Notification of Public Knowledge and Benton Foundation WC Docket No. 10-90 *et al*. (filed Aug. 12, 2011).

[42] The ABC proposal only contemplates extending broadband access to 2.2 million presently unserved households out of the 7 million households cited in the National Broadband Plan as lacking access to terrestrial, fixed broadband infrastructure. Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al*, Attachment 1 at 5 (filed July 29, 2011), Commenters strongly oppose this level of access and cite to the ABC proposal merely as a means of illustrating the potential large gap in service.

subsidies to serve the highest cost rural areas. Thus, this pilot funding may become a necessity for those communities to fund adequate[43] broadband access, and thus for the Commission to adhere to the principle "that all Americans should have access to communications services,"[44] and now particularly to broadband.[45]

A pilot program modeled on TOP could provide critical support for funding deployment in these highest cost communities. TOP awarded 610 grants totaling $233.5 million,[46] leveraging non-profits, community groups, and other local institutions to "encourage innovative ways of using information and communications technology in underserved communities."[47] A similar pilot program could leverage community resources and institutional knowledge to deploy more cost-effective broadband infrastructure in otherwise unserved areas. However, as illustrated below, facilitating high-speed broadband access for high-cost communities that are outside the reach of subsidized carrier buildout is not a minor task and will require significant investment.

In estimating the gap to providing service to all housing units in the country with terrestrial service, the Commission's OBI Technical Paper No. 1 calculates the cost of service gap at $23.4 billion.[48] Further, "the most expensive counties have a disproportionately large investment gap," and "[t]he most expensive 3.5% of the unserved … account for 57% or $13.4

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[43] Satellite should not be a rural community's only option, given its significant performance limits and high cost.

[44] NPRM ¶ 2.

[45] *See id.* at ¶ 3. "Ubiquitous broadband infrastructure has become crucial to our nation's economic development and civic life" and "[a]s important as these benefits are in America's cities – where more than two-thirds of residents have come to rely on broadband – the distance-conquering benefits of broadband can be even more important in America's more remote small towns, rural and insular areas, and Tribal lands."

[46] http://www.ntia.gov/legacy/ntiahome/top/grants/grants.htm.

[47] Speech by Commerce Secretary William Daley (Feb. 7, 2000) http://www.techlawjournal.com/taxation/20000208b.htm

[48] *Id*. at 40.

billion of the total gap." This 3.5% segment of the unserved is therefore truly the highest cost to serve by large margins.[49] Commenters believe that local self-provisioning and innovative community network models can fill this gap at significantly more cost-effective levels than subsidizing profits for large commercial carriers, but the gap, and the cost to bridge it, underscores the need for significant funds to facilitate meaningful broadband connectivity in these remaining unserved communities. Commenters do not suggest that an investment equal to the total gap amount noted above is prudent, but as a comparison, the Commission allocated a modest $200 million to fund just 22 telehealth infrastructure projects as part of its Rural Health Care Pilot Program in 2009-2010.[50] If the Commission is serious about supporting the efforts to self-provision, it will need to allocate adequate support to achieve meaningful deployment in these communities.

IV. CONCLUSION

For the reasons outlined above, Commenters urge the Commission to reject the ABC Joint Proposal, specifically those provisions related to raising the Subscriber Line Charge, implementing a Right of First Refusal, and eliminating public interest obligations on fund recipients. Further, Commenters ask the Commission to preserve competition for broadband services in high-cost communities by imposing interconnection obligations on Connect America Fund recipients as a condition of support. Finally, Commenters support the idea of creating an adequately funded program aimed at the supporting community self-provisioning in the remaining unserved communities.

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[49] Indeed, the paper notes that "the savings form moving the first 3.5% off of terrestrial options is more than twice the savings from moving the next roughly 12%." *Id*. at 41.

[50] *See* Rural Telemedicine Program Funds 16 More Broadband Telehealth Networks (rel. Feb. 18, 2010) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296348A1.pdf; FCC Update on Rural Healthcare Pilot Program Initiative (rel. Apr. 16, 2009) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-290141A1.pdf

Respectfully submitted,

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